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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,998	06/20/2001	Nicholas V. Nechitailo	A7965	2408

7590 12/11/2003
SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue, NW
Washington, DC 20037-3213

EXAMINER

NASRI, JAVAID H

ART UNIT	PAPER NUMBER
2839	

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/883,998	Applicant(s) NECHITAILO, NICHOLAS V.	
	Examiner Javaid Nasri	Art Unit 2839	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-11, 13, 15-17, 19, 20 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-11, 13, 15-17, 19, 22 and 25 is/are allowed.
- 6) ☒ Claim(s) 20, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 20, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Field et al (6,304,699, cited in previous office action) in view of the admitted known in the art material disclosed in the specification page 5, lines 6-11).

Field et al discloses an outermost protective sheath (50) formed from a piece of tape of a wound piece of composite material (50 is combination of 36, 34, 52 and 54 combined as outermost protective sheath) , a plurality of stacks (26, 22) which are stranded to be radially positioned within the outer protective sheath, each of the plurality of stacks include a plurality of buffer tubes, for claim 23, tape (50, 94) made from a composite material (see above), applying gel (52) to a first side of the tape (see figure 3), depositing an optical fiber (92) directly on the tape (see figure 7), rolling the tape to form a buffer tube (see figure 7), an axial member (21).

Note: it would also be obvious to one of ordinary skill in the art, at the time of the invention for Field et al to use well known material such as Nextel 3M Flame Stopping Dot Paper) to make the members from a composite tape in view of the admitted known in the art material disclosed in the specification page 5, lines 6-11) in order to have adequate tensile and compression strength properties.

Allowable Subject Matter

3. Claims 1, 3-11, 13, 14, 15-17, 19, 22 and 25 are allowed.

REASONS FOR ALLOWANCE

4. The following is an examiner's statement of reasons for allowance:

See previous office action.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Response to Arguments

6. Applicant's arguments filed on 10/20/2003 have been fully considered but they are not persuasive.

- a) regarding applicant's comment that Field does not show an "outermost" sheath that is formed from such a material, nor is any "outermost" sheath applied from Field. It should be noted that claims reads on composite material as shown in the rejection above.
- b) regarding applicant's comment that the individual optical fibers of Field are not placed "directly" on any of elements 34, 50 or 54). It should be noted that this limitation is clearly shown by Field as shown in the rejection above.
- c) regarding applicant's comment that one skilled in the art would not have replaced the disclosed solid central member of Field with a wound piece of composite tape. There is no teaching in any of the reference. It should be noted that there is teaching in the specification page 5, lines 6-11 that "the composite tape can be of the type known in the art, and which has adequate tensile and compression strength properties".

Contact

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javaid Nasri whose telephone number is 703 308 5876. The examiner can normally be reached on Monday to Friday.

Art Unit: 2839

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn Feild can be reached on 703 308 2710. The fax phone number for the organization where this application or proceeding is assigned is 703 872 9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0956.

Any correspondence to this action may be mailed to:

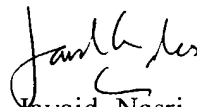
**Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450**

For additional information regarding this new address, which was effective May 1, 2003, see *Correspondence with the United States Patent and Trademark Office, 68 Fed. Reg. 14332 (March 25, 2003)*.

Or faxed to: 703-308-7722 or 308-7724 (informal or draft communications should be clearly labeled "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to:

**Crystal Plaza 4, Fourth Floor (receptionist)
2201 South Clark Place, Arlington, Virginia**


Javaid Nasri
Primary Examiner
Art Unit 2839

jhn
December 9, 2003